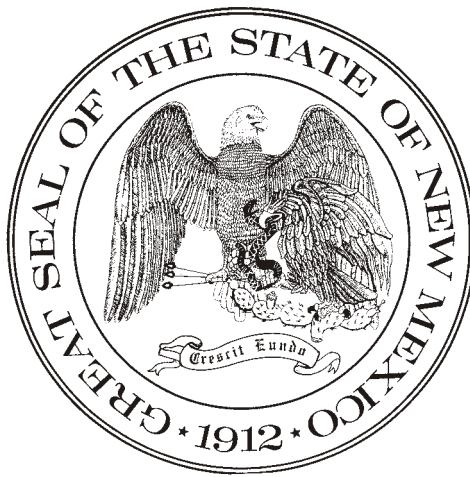


# **Tobacco Settlement Revenue Oversight Committee**

## **2006 INTERIM REPORT**



**New Mexico State Legislature**  
***Legislative Council Service***  
***411 State Capitol***  
***Santa Fe, New Mexico***

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## **Work Plan and Meeting Schedule**

**2006 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**Members**

The tobacco settlement revenue oversight committee was created pursuant to Section 2-19-1 NMSA 1978. The committee members are:

**Rep. Gail Chasey, Co-chair  
Sen. Mary Jane M. Garcia, Co-chair  
Sen. John T.L. Grubescic**

**Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn**

**Advisory Members**

**Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman**

**Sen. Linda M. Lopez  
Sen. James G. Taylor  
Rep. Teresa A. Zanetti**

**Work Plan**

Section 6-4-9 NMSA 1978, as amended in 2003, transferred all tobacco settlement revenues received in fiscal years 2003 through 2006 to the general fund, discontinuing the transfer of 50 percent of the revenues to the tobacco settlement program fund until fiscal year 2007. With the termination of diversion of revenue into the general fund, the committee will continue its oversight duties for the programs that receive funding through the tobacco settlement program fund.

During the 2006 interim, the tobacco settlement revenue oversight committee proposes to:

- (1) monitor the use of tobacco settlement revenue by maintaining oversight of those programs recommended by the committee and funded by the legislature;
- (2) prepare recommendations, based on its program evaluation process, for program funding levels for fiscal year 2008;
- (3) examine issues and legislation affecting the collection of tobacco taxes;
- (4) examine the status of the revenue and reserve for the tobacco settlement permanent fund;
- (5) work with the attorney general's office, as necessary, to ensure that New Mexico continues to receive the highest possible revenue from the tobacco settlement; and
- (6) recommend legislation or changes to existing legislation, if any.

## **2006 APPROVED MEETING SCHEDULE**

**June 14                      Santa Fe**

**September 8                Santa Fe**

**October 6                    Santa Fe**

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## Agendas

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 14, 2006  
Room 311, State Capitol  
Santa Fe, New Mexico**

**Wednesday, June 14**

- 10:00 a.m.    Call to Order  
                  —Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs**
- 10:05 a.m.    Development of Committee Work Plan and Meeting Schedule**
- Public Comment**
- Adjournment**

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**September 8, 2006  
Room 311  
State Capitol  
Santa Fe, New Mexico**

**Friday, September 8**

- 9:00 a.m.    Call to Order**  
—Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- 9:05 a.m.    Approval of June 14, 2006 Minutes**
- 9:10 a.m.    Overview of Past Recommendations/Programs to Be Funded**  
—Cleo Griffith, Legislative Council Service
- 9:40 a.m.    University of New Mexico (UNM) Health Sciences Center Evaluation and RFP Process Report**  
—Paul Roth, M.D., Executive Vice President for Health Sciences,  
Dean, UNM School of Medicine  
—Dr. Richard S. Larson, M.D., Ph.D., Senior Associate Dean for Research
- 10:30 a.m.    Lovelace Respiratory Research Institute (LRRI) Status and Outcomes Report**  
—Dr. Robert Rubin, President and CEO, LRRI
- 11:00 a.m.    Tobacco Use Prevention and Control (TUPAC) Program Evaluation and RFP Process Report**  
—David Vigil, Bureau Chief, Chronic Disease Prevention and Control,  
Department of Health (DOH)  
—Larry Elmore, Program Manager, TUPAC Program, DOH
- 11:30 a.m.    Diabetes Program Evaluation and RFP Process Report**  
—Judith Gabriele, Program Manager, DOH
- 12:00 noon    Lunch**
- 1:30 p.m.    HIV/AIDS Program Evaluation and RFP Process Report**  
—Daryl Smith, Infectious Disease Bureau Chief, DOH
- 2:00 p.m.    Breast and Cervical Cancer Program Evaluation**  
—Larry Heyeck, Deputy Director, Medical Assistance Division, HSD  
—Virginia Alcon, Staff Manager, Medical Assistance Division,  
Human Services Department (HSD)



**2:30 p.m. TUPAC Program Update**  
**—Benny Shendo, Secretary, Indian Affairs Department**

**3:00 p.m. Smartmoves Program Evaluation**  
**—Al Padilla, Chief Professional Officer for Santa Fe Boys' and Girls' Clubs**  
**and Administrator for Smartmoves Program, New Mexico State**  
**Alliance for Boys' and Girls' Clubs**

**3:30 p.m. Public Comment**

## Adjournment

Revised: October 4, 2006

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 6, 2006  
Room 311  
State Capitol  
Santa Fe, New Mexico**

**Friday, October 6**

- 9:00 a.m.    Call to Order**  
                  —Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- 9:05 a.m.    Approval of September 8, 2006 Minutes**
- 9:15 a.m.    Tobacco Settlement Agreement Update**  
                  —David Thomson, Assistant Attorney General
- 9:45 a.m.    Tobacco Permanent Fund Investment/Balance**  
                  —Bob Jacksha, State Investment Council
- 10:00 a.m.   Tobacco Settlement Revenue Estimates — Update on Permanent Fund**  
                  —Laird Graeser, Department of Finance and Administration
- 10:15 a.m.   Master Settlement Agreement and Tobacco Control Program Funding**  
                  **National Overview**  
                  —Eric Lindblom, Assistant General Counsel, Director of Policy Research,  
                  The  
                                  **Campaign for Tobacco-Free Kids**
- 11:00 a.m.   Implementation of House Bill 617 Cigarette Tax Bill and Related Issues**  
                  —Taxation and Revenue Department Staff
- 11:45 a.m.   Detection of Lung Cancer Testing**  
                  —John Cousins, President, Biomoda, Inc.
- 12:15 p.m.   Working Lunch**
- 12:30 p.m.   Smokeless Tobacco Discussion**  
                  —Jim O'Neill, Nathan Bush
- 2:00 p.m.    Smoke-Free Environment Discussion**  
                  —Representative Al Park  
                  —Steve Brockett, Alamogordo City Commissioner  
                  —Chris Lujan, Alamogordo City Commissioner

**3:30 p.m. Public Comment**

**3:45 p.m. Committee Discussion on FY08 Program Funding Recommendations**

**Adjournment**

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 31, 2006  
Room 311  
State Capitol  
Santa Fe, New Mexico**

**Tuesday, October 31**

- 10:00 a.m.     Call to Order  
                  —Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs**
- 10:05 a.m.     Approval of October 6, 2006 Minutes**
- 10:15 a.m.     Public Comment**
- 10:45 a.m.     Proposed Legislation for 2007 Legislative Session**
- Adjournment**

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## Minutes

**Minutes  
of the  
Tobacco Settlement Revenue Oversight Committee  
June 14, 2006  
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order on June 14, 2006 at 10:00 a.m. in Room 311, State Capitol, by Representative Gail Chasey, co-chair.

**Present**

Rep. Gail Chasey, co-chair  
Sen. Mary Jane M. Garcia, co-chair  
Sen. John T.L. Grubescic  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

**Advisory Members**

Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Linda M. Lopez  
Rep. Teresa A. Zanetti

Sen. Dede Feldman  
Sen. James G. Taylor  
Rep. Luciano "Lucky" Varela

**Staff**

Ramona Schmidt  
Cristina Martinez

Representative Chasey welcomed all attendees to the TSROC meeting and asked the members of the committee and support staff to introduce themselves.

The proposed dates for the upcoming TSROC meetings were reviewed by committee members. Because of conflicting dates with the Legislative Finance Committee, the committee requests the July 14 meeting be changed to September 8 and the September 29 meeting be changed to October 6 in order to allow Representative Varela to attend the TSROC meetings.

Ramona Schmidt reviewed the proposed work plan with the committee members. Committee members proposed adding monitoring the transition within the Attorney General's office after the election of a new attorney general (AG). The committee asked that the presentation by staff from the Department of Finance and Administration (DFA) include review of the status of the Tobacco Settlement Permanent Fund.

Other proposed topics to add to upcoming sessions include:

September meeting items:

- presentation and history of past recommendations to TSROC program by Cleo Griffith; and

- UNM/IAC/DOH/LRRI program funding/measurements/RFP process/future request discussion on smokeless tobacco;

October meeting items:

- AG presentation/update on tobacco settlement agreement/transition to new AG;
- concerns by pueblos/tribes with tobacco sales — Pam Ray;
- DFA status of Tobacco Settlement Permanent Fund — Melissa Vigil; and
- TSROC review of proposed program funding for fiscal year 2008.

Bob Barberousse, the lobbyist for the Lovelace Respiratory Research Institute (LRRI), informed committee members that there had been a language change late in the 2006 legislative session to House Bill 2 affecting its fiscal year 2007 recommendations for funding from the Tobacco Settlement Permanent Fund and resulting in money originally designated for LRRI to remain in the UNM Health Sciences Center. Mr. Barberousse clarified that original language in House Bill 2 included funding of \$4.4 million to the UNM Health Sciences Center, of which \$1 million was for "research and clinical care programs in lung and tobacco-related illnesses" but was changed during conference committee to read "for instruction and general purposes". A meeting was held March 9 between Dr. Roth, his staff, Dr. Rubin from LRRI, Mr. Barberousse and Edmundo Gonzales at which Dr. Rubin took the position that he was under a mandate to use the money, as he interpreted the legislation, for funding uncompensated care. Committee members inquired if there had been an offer to share the funds between LRRI and UNM. Mr. Barberousse stated that to date there had been no such offer.

Committee members noted the initial reason for funding the LRRI research through UNM was to avoid the anti-donation clause. Senator Lopez recommended that a letter be sent from the committee to Dr. Roth addressing the committee's concern regarding this issue and requesting Dr. Roth to reconsider the action that will result in no funding from Tobacco Settlement Permanent Fund to LRRI. Concern was raised that the funding is specific to tobacco-related issues and the funding of uncompensated care to UNM does not fall under this directive. Motion was made, seconded and unanimously adopted to send a letter to Dr. Roth from the committee as proposed by Senator Lopez.

Having no further business, the committee adjourned at 12:00 noon.

**MINUTES**  
**of the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**  
**September 8, 2006**  
**Santa Fe**

The second meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order on September 8, 2006 at 9:00 a.m. in Room 311, State Capitol, by Representative Gail Chasey, co-chair.

**Present**

Rep. Gail Chasey, co-chair  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Sen. Mary Jane M. Garcia, co-chair  
Sen. John T.L. Grubescic

**Advisory Members**

Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Sen. Linda M. Lopez

Sen. James G. Taylor  
Rep. Teresa A. Zanetti

**Guest**

Rep. Luciano "Lucky" Varela

**Staff**

Ramona Schmidt  
Cristina Martinez

**Friday, September 8**

Representative Chasey welcomed all attendees to the TSROC meeting and asked the members of the committee and support staff to introduce themselves.

**Overview of Past Recommendations**

Cleo Griffith, Legislative Council Service staff, gave a history on the origination of the Master Settlement Agreement, the funding and the original intent for funding on health and education. She noted that 40 states were parties to the Master Settlement Agreement in November 1998, which required the nation's largest tobacco companies to make annual payments to states in perpetuity for reimbursement for past tobacco-related costs. An estimate of the payments that New Mexico would receive over the next 25 years was \$1.2 billion. The amount that manufacturers would actually pay is adjusted annually based on inflation and the number of cigarettes sold. Ms. Griffith shared two interesting provisions: (1) payments are based on volume of sales in the United States, not on profits; and (2) the settlement agreement did not address state appropriation of funds, leaving states free to use the funds as they chose. She stated the committee began presenting its requests before the Legislative Finance Committee (LFC) in 2000 in order to have the legislature support the program payments.



A chart of the five-year calendar year market value calculations and distributions under the 4.7 percent formula was reviewed. It was noted that if funding had not been diverted from the permanent fund, in 2025, the corpus of the fund could be protected and larger distributions could occur.

Ms. Griffith noted that, in 2003, the governor wanted to abolish the permanent fund and put the settlement revenue in the general fund. A compromise was reached to suspend deposits to the permanent fund for four years and treat the balance in the permanent fund as part of reserves. She stated that as of FY07 100 percent of the payment is going into the Tobacco Permanent Fund. The amount for FY05 was \$77.3 million, for FY06 it was \$83.6 million and for FY07 it is \$106.5 million. Ms. Griffith reminded the committee that it was the Medicaid crisis that resulted in the legislation to move the funds into the general fund rather than putting 100 percent in the permanent fund. In respect to Medicaid funding, Representative Varela said the LFC is looking at the budget request from the Human Services Department and the revenue picture for 2010 looks positive. Committee members asked that a presentation occur at the next meeting to review how the State Investment Council is investing the Tobacco Settlement Fund money. Ms. Griffith stated the committee is still charged with oversight of needs and has the capability to change what programs are funded.

### **University of New Mexico (UNM) Health Sciences Center Evaluation and RFP Process Report**

The UNM Health Sciences Center (HSC) presentation was made by Dr. Roth, who gave a general overview of the UNM Health Sciences Center, which was created in 1994. The HSC is made up of the College of Nursing, College of Pharmacy, the School of Medicine, the Health Sciences Library and Informatics Center and UNM hospitals. Dr. Roth stated that the primary mission of the HSC is to prepare the next generation of New Mexico's health care providers. He noted that the Cancer Center had recently been recognized as one of the top 50 in the country. Dr. Roth stated the research at the HSC focuses on the collaborative, interdisciplinary efforts of the School of Medicine, College of Nursing and College of Pharmacy faculty. This model promotes the inclusion of scientists from both clinical and basic science disciplines into programs of translational research that are dedicated to finding ways to improve health care outcomes. Dr. Roth stated they are working with the Department of Health (DOH) on research. Dr. Richard S. Larson, senior associate dean for research, said that there is a project he leads on the detection of viruses, including the West Nile virus and that he is currently developing a prototype of a hand-held device to be used for virus detection.

It was noted that the allocation of the Tobacco Settlement Fund for FY07 appropriations to UNM HSC for special programs, I&G programs and research programs was for a total of \$4.4 million. Dr. Larson reviewed the tobacco-related research FY06 allocations. He reviewed various areas, including the genomics core facilities, epidemiology, enhanced tobacco-related research, clinical research and trials, and biocomputing. Dr. Larson stated HSC is evaluated yearly with internal evaluation criteria and external measures of success. He then reviewed the publications and grants supported by tobacco settlement funds, clinical and translational science center (CTSC) and signature programs, the CTSC objective, an organizational schematic of the UNM CTSC, the CTSC status and the highlights of supported activities.

Discussion occurred as to determination of what actually causes tobacco-related disease. It was noted compounds in the tobacco cause disease but with no specific compound as of yet identified.

### **Lovelace Respiratory Research Institute (LRRI) Status and Outcomes Report**

Dr. Robert Rubin, Lovelace Respiratory Research Institute (LRRI), stated LRRI is the only private basic-science, biomedical research organization totally dedicated to the study of respiratory diseases. He stated the original major goal was to develop a test that can identify people who are at greatest risk for lung cancer, so these people could receive further clinical evaluation to determine if they have early-stage lung cancer. Dr. Rubin stated that there is a program at LRRI to identify a panel of genes whose detection in sputum predicts lung cancer up to 18 months prior to diagnosis by a physician in some persons. Dr. Yohannes Tesfaigzi addressed the committee on chronic obstructive pulmonary disease (COPD) and the genes associated with emphysema. Dr. Rubin stated these two programs are what tobacco funds are used for. Representative Chasey noted the committee is aware of the funding failure to LRRI during the current fiscal year and stated the committee would work to address this to ensure it does not occur in the upcoming year. Representative Varela said he or someone from LFC would research the LRRI funding failure and report the findings to the TSROC. Committee members noted this program has been one of the most beneficial use of funds and stated that when the funding recommendations are made for FY08, LRRI should be fully funded. Discussion occurred on the shared partnership between UNM and LRRI, the need for stability in funding, the possibility to restore the lost funding and the proposal of changing the fiscal agent from UNM to DOH.

A motion was made to approve the minutes from the June 14, 2006 meeting, which was seconded, and the minutes were adopted.

### **Tobacco Use Prevention and Control (TUPAC) Program Evaluation and RFP Process Report**

David Vigil, bureau chief, and Larry Elmore, program manager, DOH, presented before the committee on the Tobacco Use Prevention and Control (TUPAC) Program. The request for proposal (RFP) process was discussed. Mr. Elmore reviewed the tobacco performance measures that were put in place at the request of the committee. Mr. Elmore stated the first performance measure is per capita consumption, which has a 25-pack decrease over the past 10 years. The second performance measure is the adult smoking rate with a statistically significant decline in adult smoking between the inception of the TUPAC Program and 2004. The benefits of these decreases were reviewed. Mr. Elmore noted a funding change from last year included a Spit Tobacco Use Prevention Program, in part due to the increase in marketing by the tobacco industry, and increased funding for cessation programs. The TUPAC FY07 contract distribution and TUPAC Native American-focused funding were reviewed. Mr. Elmore stated the RFP process in place ensures effective providers but can be challenging for organizations that are not experienced in the area of the department's TUPAC Program or proposal writing. Mr. Elmore reviewed ways DOH has improved processes so tribes can access funding, including providing instructional DVDs and a web site, conducting a preproposal conference, providing technical assistance and capacity-building mini-grants, setting aside funding for tribes for capacity building that does not involve an RFP process and awarding money to tribes exempt from the RFP process.

In response to a question on the youth smoking measurement, Mr. Elmore noted this measurement has been changed to track middle school rather than high school students, which has resulted in a lack of significant statistics. He said because it is illegal for youth under the age of 18 to purchase cigarettes, it is difficult to track to see if raising the cigarette tax has had an impact on teen smoking. Discussion occurred on the youth media campaign and what gets teens' attention. The various methods for cessation tracking were reviewed.

### **Diabetes Program Evaluation and RFP Process Report**

Judith Gabriele, program manager, DOH, discussed the diabetes program evaluation. Ms. Gabriele spoke about diabetes in New Mexico and reviewed the risk factors, the cost to the state and how the department spent the Tobacco Settlement Fund money in FY06. She stated the program goals are to improve diabetes practice in rural New Mexico, improve diabetes self-management, support indigent diabetes care and improve nutrition and physical activity for people at risk for type 2 diabetes.

Ms. Gabriele reviewed the following project summaries:

- a professional, materials and system development to improve self-management;
- the kitchen creations cooking school project, developed with 49 kitchen creations schools that reached 995 participants during 2006;
- the Active and Alive Program, featuring physical activity classes and walking clubs for people with diabetes with limited mobility;
- the Meters and Strips Program to provide glucose meters and strips;
- the Harm Reduction Program that allows people with diabetes to safely dispose of used syringes;
- CATCH, a coordinated approach to child health;
- Walk Dona Ana, which is a walking program in Las Cruces; and
- public education and media with a web site and ad campaign in selected locations publicizing the toll-free phone number.

Ms. Gabriele will provide committee members with information on the schools by region that offer the CATCH Program. Committee members discussed the need for increasing physical activity and training in the school system and certification of diabetes educators.

### **HIV/AIDS Program Evaluation and RFP Process Report**

Daryl Smith, bureau chief with the DOH, presented before the committee on the HIV/AIDS Program. He stated that as of June 30, 2006, there were 3,171 persons on record, cumulatively, living with HIV/AIDS in New Mexico and, of this number, 2,085 were diagnosed in-state. In FY06, there were 156 new diagnosed cases of HIV/AIDS in New Mexico and 12 deaths related to HIV/AIDS. Mr. Smith stated tobacco funds are utilized to support the department's Harm Reduction Program, which provides syringe exchange, overdose prevention training, auricular detoxification and substance use referrals to approximately 4,300 people. The DOH HIV/AIDS services work with the HIV-positive population, providing medical treatment and counseling, case management and other services primarily through the Health Management Alliance (HMA) provider agreements.

Committee members raised issues, including required testing for HIV, the types of tests used to detect HIV and the cost per client in the program. Mr. Smith stated the tobacco funds received support 74 clients in New Mexico.

### **Breast and Cervical Cancer Program Evaluation**

Larry Heyeck, deputy director, and Virginia Alcon, staff manager, Human Services Department, presented before the committee on the Breast and Cervical Cancer Program. Mr. Heyeck stated that DOH receives a federal grant from the Centers for Disease Control (CDC) to perform screenings for breast and cervical cancer and that Medicaid administers the program once DOH has determined a woman is eligible for the program. He reviewed eligibility criteria; federal criteria for eligibility; DOH breast and cervical cancer data; and the costs for state FY06 and FY05. He stated that the goal of the program is to increase services and noted that women in the program receive full Medicaid coverage through fee for service. Mr. Heyeck stated that administrative costs for the Medicaid program are completed as an aggregate amount since costs are primarily funded from a single funding stream.

Discussion occurred as to federally matched funds.

### **Indian Affairs Department TUPAC Program Update**

Benny Shendo, Jr., secretary, and Teresa C. Gomez, deputy director, Indian Affairs Department (IAD), addressed the committee on the funding through the committee for tobacco cessation programs that impact Native American communities throughout the state. Secretary Shendo stated that they met with Mr. Elmore from DOH to discuss evaluation models and best practices. They agreed to develop a curriculum that looks at the commercial use of tobacco not associated with the use of tobacco in Native American religious practices. He stated that there are many issues in the Native American community to address ongoing health issues of which this could be a part. Secretary Shendo said IAD is looking at dividing funding into two parts, with approximately half of the \$500,000 to be used for an RFP for tribes or organizations to partner among tribes or nonprofit organizations addressing this on a larger scale, and the remaining amount to be divided into mini-grants for the tribes. He informed the committee of various needs among the 22 tribes for youth and stated that he is unsure as to any restrictions on use of the funds. Secretary Shendo stated that due to the issues with the SHARE system, it will take some time to put out the RFP. Discussion occurred on taxation on Indian trust land and within the checkerboard area.

Committee members clarified part of the intent in partnering the IAD with the DOH TUPAC Program was to mirror some of the CDC recommendations. The interpretation is that the funding was to go to direct services for tobacco prevention programs for children. Secretary Shendo noted that one challenge facing the IAD will be the understanding by youth and elders regarding tobacco use for religious and ceremonial purposes as opposed to recreational use and the conversations that will need to occur to meet this objective. Concern was raised by the committee on providing individual communities with smaller grants of \$10,000 rather than working with those entities already involved in the TUPAC Program. In response to the concern, Deputy Director Gomez stated performance outcomes and measures would be tracked on any mini-grants awarded. Secretary Shendo asked audience members working with the IAD TUPAC Program to introduce themselves and share their roles.

**SmartMoves Program Evaluation**

Mr. Elmore updated the committee members on the concerns between the Santa Fe Boys' and Girls' Club and the New Mexico Alliance. He noted an independent evaluator was hired who did site visits with all the Boys' and Girls' Clubs throughout the state. This resulted in a report being drafted and shared, but after review, it was decided there was additional input that should be gathered. Mr. Elmore stated that this had been accomplished and an executive summary will be shared with the members of the committee.

Having no further business, the committee adjourned at 3:45 p.m.

**MINUTES  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE  
October 6, 2006  
Santa Fe**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order on October 6, 2006 at 9:00 a.m. in Room 311, State Capitol, by Representative Gail Chasey, co-chair.

**Present**

Rep. Gail Chasey, co-chair  
Sen. Mary Jane M. Garcia, co-chair  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Sen. John T.L. Grubescic

**Advisory Members**

Sen. Rod Adair  
Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Sen. Linda M. Lopez

Rep. Ray Begaye  
Sen. James G. Taylor  
Rep. Teresa A. Zanetti

**Staff**

Ramona Schmidt  
Cristina Martinez

**Friday, October 6**

Representative Chasey welcomed all attendees to the TSROC meeting and asked the members of the committee and support staff to introduce themselves.

**Tobacco Settlement Agreement Update**

David Thomson, assistant attorney general, and Claudia Ravanelli, chief paralegal, presented a brief summary on the fiscal year funding. Mr. Thomson stated that in 2005, through enforcement under the Master Settlement Agreement (MSA), there were seven manufacturers that were noncompliant and notified by letter to be brought into compliance. As a result, ZigZag has escrowed an additional \$49,000 and it is continuing to pursue outliers. He noted the Attorney General's Office has been working with the Taxation and Revenue Department (TRD) staff closely to continue to meet the due diligence requirements by the state under the MSA. The Attorney General's Office appreciates the funding for a designated attorney to handle the reporting requirements laid out in the MSA and suggested that designation of an identified person in TRD to handle the MSA due diligence requirements would be highly advisable to ensure compliance.

Mr. Thomson stated that while the Attorney General's Office is unable to track foreign companies, it is now able to identify the distributor in the state to enforce compliance. He noted the tobacco industry is attempting to force states into arbitration as to whether the MSA is a

significant factor in market loss and whether each participating state is compliant in its due diligence requirements. Mr. Thomson stated there continues to be ongoing conversation regarding this issue and growing frustration with regard to the way the MSA is operating.

In response to a question involving an additional \$6.4 million being paid to New Mexico in April/May 2006 for this fiscal year, Mr. Thomson stated he had not seen a letter involving notification of payment of an award for the state of New Mexico's effort in suing tobacco manufacturers resulting in the MSA but will work with committee staff to clarify this additional revenue. He reminded committee members that in 1997, when the state engaged the industry in litigation and was awarded about \$85 million over 10 years, the amount continues to be subject to adjustments.

Mr. Thomson stated there are continued conversations regarding behavioral issues within the industry and he will notify the committee if and when this is addressed. He does not think the dispute over the MSA will continue year after year, as the legal issues will be decided as to what the state's obligations are under diligent enforcement and what the deciding factors are. He noted it is costly for both the manufacturers and the states to address these issues.

Committee issues raised included how to track all the different types of cigarettes on the market, the fluidity of the industry, the importance of tracking through TRD, MSA requirements and how other states use the MSA revenue. It was noted the MSA does provide certain restrictions on what the funds can be spent on, but it is the legislature of each state that sets the policy. Clarification was made that New Mexico statute addresses how the revenue should be spent and that the settlement amounts are tied to domestic revenues, which are declining, and not international revenues, which are increasing. Mr. Thomson stated that another wrinkle may be tribal and internet sales and the Attorney General's Office continues to work on national attorney generals to address the possible impact.

#### **Tobacco Permanent Fund Investment/Balance**

Bob Jacksha, State Investment Council, stated the Tobacco Permanent Fund has grown through contributions and investment returns. He reviewed the historical allocations, total fund benchmarks and portfolio returns and risks. He stated an initial deposit of \$49 million was made to create this fund in May 2000. Mr. Jacksha clarified that there are funds the Tobacco Settlement Permanent Fund cannot participate in due to their being too small. He noted the Tobacco Permanent Fund is invested the same as other funds with investments in all pools.

#### **Tobacco Settlement Revenue Estimates — Update on Tobacco Permanent Fund**

Laird Graeser, Department of Finance and Administration, noted the incidence of lowering smoking is not just a national issue but is international as well. Mr. Graeser informed the committee that as a result of information presented during the previous presentations, he will need to revise the figures. He noted to date the state has received \$284 million, which is part of an estimated \$1.25 billion to be received by the year 2025. He stated the revenue for FY07 is flat due in part to the previous sequestration. Mr. Graeser noted that for the purpose of this presentation, he used an adjustment of -2.6 percent.

Committee discussion occurred on the impact of the number of cigarettes sold in Indian smoke shops and the market share and volume adjustment.

## **MSA and Tobacco Control Program Funding National Overview**

Eric Lindblom, assistant general counsel, director of policy research, The Campaign for Tobacco-Free Kids, spoke on the original reason for the MSA. He noted it is a contract between the states and the tobacco companies and the enforcement of the MSA can only be addressed between those entities. Mr. Lindblom stated that New Mexico is doing better than the average state in the money received. He reviewed information on tobacco money in New Mexico, which includes total state tobacco revenue, Centers for Disease Control and Prevention (CDC) minimum prevention spending, actual state tobacco prevention spending, tobacco company marketing- and smoking-caused direct costs, and noted that there are related indirect costs not tracked. Mr. Lindblom noted while the state is improving smoking prevention spending, the tobacco industry is increasing its marketing expenditures.

He stated that the CDC reviews the most cost-effective manner to address smoking prevention, including oversight and the amount spent to be cost-effective and have measurable results. He noted that it is important to have sustained funding and gave the state of Massachusetts as an example of a state that did not sustain and has seen an increase in smoking. He stated that conservatively speaking, if New Mexico invests in CDC recommendations, the state could see about a one percent decline average in smoking.

Committee discussion included limiting tobacco industry marketing expenditures, the rise of small manufacturers and the difficulty addressing regulatory issues with the increase in manufacturers. Mr. Lindblom will provide information to the committee on CDC recommendations for what should be spent for varying programs. He made suggestions of various legal approaches to encourage tobacco manufacturers to honor the MSA and noted the national attorney generals have not come out as a national organization to seek legal action other than the current arbitration. He stated he is unaware of any provision in the MSA limiting legal action.

In response to a question as to whether, comparatively speaking, if raising the price or tax of cigarettes or spending more on prevention has more impact on consumption, Mr. Lindblom stated that if the tax is raised and money is spent on prevention, the most impact occurs, and evidence of doing both gives a synergistic impact. The point was made that if cigarette taxes are raised, it is only fair to adequately fund tobacco cessation assistance. Mr. Lindblom stated that to have impact, an increase in tax needs to be large enough and \$.50 is a good amount to raise a tax. It was noted that the difficulty in tracking youth smoking is that high school students are counted, but dropouts are not, and there is a higher percentage of high school dropouts who smoke.

## **Lovelace Respiratory Research Institute (LRRI)/University of New Mexico (UNM) Funding Issue Update**

Arly Williams, Legislative Finance Committee, shared the history of the funding request by UNM and the result of the recommended \$1 million appropriated annually to LRRI through UNM being moved out of the line item for research and placed into ING for UNM by the Senate Finance Committee. Ms. Williams did not have further information as to a possible supplemental appropriation being made to LRRI during the current fiscal year and no further information has been received from Representative Varela regarding the funding issue.



## **Implementation of House Bill 617 (Cigarette Tax Bill) and Related Issues**

Libby Gonzales and Linda Palmer, TRD, presented before the committee summarizing HB 617, passed during the past session, which introduced sweeping changes.

Ms. Gonzales reviewed changes and implementation concerning Cigarette Tax Act definitions, requirements for affixing stamps, licensing requirements, retail sales of cigarettes, record retention requirements, shipment of unstamped cigarettes in New Mexico, new reporting requirements, tax exemption provisions, intergovernmental agreements and civil penalties. She shared the status and description of proposed regulations and stated a proposed regulation hearing was held on August 31, 2006. She noted a number of industry and tribal representatives were present and provided written and oral comments on the proposal. Ms. Gonzales stated Secretary of Taxation and Revenue Goodwin is considering these comments and plans to file regulations by the end of the year.

TRD is in the process of developing legislative proposals to clarify some of the changes that were made in HB 617, which include the definition of cigar, exemption for sales by Indian entities, stamping and packaging requirements, labeling/contraband requirements, redemption of unstamped cigarettes protest procedures and application of fraud penalties. Ms. Gonzales stated there was concern raised during a presentation before the Revenue Stabilization and Tax Policy Committee regarding the 20-stick stamp being used on packages with small cigars with fewer than 20.

Discussion occurred as to the change involving tracking of cigarettes sold on and off reservation and the penalties in place for offenses. Representative Chasey stated that if TRD would like to have endorsement by the TSROC on the proposed bill amending HB 617, committee staff could work with TRD staff to draft legislation.

Bob Barberousse raised concern with some technical problems involved with the definition of small cigars involving the cigar being wrapped in 100 percent tobacco and suggested adopting the cigarette definition language in the MSA.

## **Detection of Lung Cancer Testing**

John Cousins, president, Biomoda, Inc., thanked the committee for the opportunity to share his progress and the possible impact of his work on cancer treatment, particularly early lung cancer detection and treatment. He requested that the committee consider funding a clinical study in cooperation with the Veterans' Administration to help New Mexico veterans and others afflicted by lung cancer to detect their disease at its early stages when survival rates are significantly improved. He reviewed the procedures used in the test. Mr. Cousins stated the Mayo Clinic in Rochester, Minnesota, has agreed to jointly conduct a study to validate its internal results and the study is ongoing with the first phase of results expected later this year. Mr. Cousins said it is his intent to conduct a long-term clinical study with the Veterans' Administration that would provide at least 2,600 veterans with screening and subsequent treatment if cancer is found. He stated it is his intent to conduct this study in New Mexico as well as to keep Biomoda in New Mexico. Mr. Cousins invited committee members to visit Biomoda's lab in Albuquerque.

Committee discussion included what federal participation might be involved, the technologies involved, the possibility of partnership with other similar entities, various avenues of funding and who would be a candidate for the test.

It was recommended that Mr. Cousins speak with the secretaries from the Human Services Department, the Veterans' Services Department and the Economic Development Department as to what would be the appropriate fiscal agent for funding.

### **Smokeless Tobacco Discussion**

A panel discussion occurred addressing smokeless tobacco. Phillip Larragoite gave a history on the taxation on "moist" tobacco. Jim O'Neill, representing United States Tobacco (UST), reviewed HB 673, which was introduced last year by Speaker Lujan. Eric Donaldson, UST representative, stated the differences among the three tobacco products UST produces are based on size. Mr. O'Neill stated UST is looking at changing the current taxation on "moist" tobacco, which is currently paid by the first purchaser, to a weight-based tax. He noted that if a weight-based tax is implemented, the tobacco revenue estimates would increase.

The committee clarified that UST is attempting to increase profits and the committee is trying to stop the use of tobacco products. Mr. Donaldson stated that UST is trying to create equity to make a level playing field.

Nathan Bush, government relations director, American Cancer Society, offered policy options for the committee based on public health issues. He reviewed why UST would want to change New Mexico's tax code on spit tobacco. He shared some business opportunism at the expense of public health driven by issues such as smokefree environment laws and maintaining nicotine-dependent user markets, which is in contrast to the public health community wanting to help users successfully quit tobacco altogether. Mr. Bush stated that most of New Mexico's neighbors have resisted this change. He said the strongest concern is that youth strongly prefer UST products and reducing UST's taxes makes UST products more accessible. Mr. Bush related the taxation of smokeless tobacco products to current taxation on beer, wine and spirits, which are all taxed differently, assumptively based on higher alcohol content. He noted that the largest tobacco companies, R. J. Reynolds and Philip Morris, have come out with new smokeless tobacco product lines.

Discussion occurred on the concern with increase in the use of smokeless tobacco. Mr. Bush encouraged the committee to look at model legislation to make competition in the smokeless tobacco market more equitable. He reviewed three options: (1) expanding the statutory definitions of smokeless tobacco to make sure they reach all of the new and experimental smokeless products being introduced to the market, including many via the internet; (2) encouraging all other smokeless tobacco companies to sign on so that they will be subject to the same marketing restrictions and other provisions as UST is; and (3) in an effort to assist people trying to quit, increasing and protecting state tobacco tax revenues over time and reducing state harms and cost. Mr. Lindblom reminded the committee that with weight-based tax, the weight can be manipulated through different products.

### **Smokefree Environment Discussion**

A video on secondhand smoke was viewed by committee members.

Representative Al Park and Steve Brockett, Alamogordo city commissioner, presented before the committee on the smokefree environment. Representative Park addressed policy changes since 2005 and stated he will introduce legislation in the upcoming session that would include bars being required as smoke-free environments. Commissioner Brockett was welcomed by the committee. He stated he was elected to the city commission this past year and has been in the restaurant business for many years. He noted that, until 2004, his restaurant had allowed smoking but had changed to a nonsmoking environment in January 2005. He noted that this change resulted in a 17 percent increase in sales and the benefits felt from turning into a nonsmoking environment included the ability to pay staff more due to the increase in sales and have a cleaner environment.

Representative Park stated that places that have instituted a smoking ban have seen an increase in sales and he is unaware of any business closing due to the ban. Mr. Bush stated that when Roswell revenues were reviewed after the enactment of a smoking ban in public spaces, the revenues had increased despite the complete ban. It was noted the nonsmoking ban is the trend and states all around New Mexico are passing smoking bans.

Committee discussion included whether the arguments in the past against the nonsmoking ban are still relevant, including: a business owner's right versus the right of the individual employee or patron, the effect secondhand smoke has on health, property rights versus health rights and if cigar bars are under different recommendations.

Representative Picraux moved that Representative Park's bill be endorsed in concept, seconded and adopted. Mr. Lindblom clarified the difference between cigars and what is defined as a small cigar is based on weight.

### **Public Comment**

Cynthia Serna stated that the smokefree environment is the most significant issue and she stood in support of Representative Park's concept for legislation. Mr. Lindblom shared a few other ideas that might fit in the cigarette tax bill discussed earlier. He stated that California has implemented a higher tax stamp and, along with enforcement, cigarette revenues went up \$120 million by stopping counterfeit tax stamps. Mr. Lindblom said there is even higher technology available and will provide a fact sheet for the committee's review. He noted a simple measure, when changing enforcement statutes as to the collection of fines obtained by agencies or offices, to distribute half to general revenues and the other half back to those agencies or offices that did the enforcement, which resulted in the penalty.

### **Committee Discussion on FY08 Program Funding Recommendations**

Ms. Schmidt reviewed the FY07 recommendations and proposed recommendations for FY08. Committee members discussed the need for further information before making final recommendations, including proposed Biomoda funding and clarification of LRRI/UNM funding. The committee members recommended that an additional TSROC meeting be requested and that a subcommittee meet composed of Senator Ryan, Senator Carraro and chaired by Representative Picraux to review and bring recommendations back before the committee regarding the two issues.

A motion was made to approve the minutes from the September 8, 2006 meeting, as amended. The motion was seconded and the minutes were adopted, as amended.

Having no further business, the committee adjourned at 4:50 p.m.

Materials distributed at the meeting are in the meeting file in the Legislative Council Service Library.

**MINUTES  
of the  
FOURTH MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 31, 2006  
Room 311, State Capitol  
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order on October 31, 2006 at 9:00 a.m. in Room 311, State Capitol, by Representative Gail Chasey, co-chair.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Sen. John T.L. Grubestic

**Advisory Members**

Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Sen. Linda M. Lopez

Sen. Rod Adair  
Rep. Ray Begaye  
Sen. James G. Taylor

**Staff**

Ramona Schmidt  
Cristina Martinez

**Tuesday, October 31**

**BioModa Subcommittee Presentation**

A subcommittee met and received a presentation by John Cousins, Maria Zannes and Herb Whitaker from BioModa. Mr. Cousins stated they have coordinated with the secretary of veterans' services, John M. Garcia, and are revising their initial funding request to specify they will be working with the Veterans' Services Department (DVS) on the project. He stated implementation would run more smoothly with a state agency at the lead to assist with financial oversight and work with other entities involved. Mr. Cousins stated the request is for approximately \$9 million total or \$1.3 million annually for seven years. He said they had met with Dr. Willman from the University of New Mexico Cancer Center and Secretary Michelle Lujan Grisham, Department of Health (DOH), who suggested there is a need for more validation of the study.

Questions raised included the process involved in clinical studies and why the state would be involved in funding. Mr. Cousins stated BioModa is a very small company with three FTEs that has been looking for creative ways to improve the technology. He noted the original work was done at Los Alamos National Laboratory and BioModa has licensed the work from

them. It was clarified that there is an expectation of accountability and that benchmarks will be set, measured and reported. Mr. Cousins stated the money being requested is for the study, in conjunction with the DVS, not for the company, and the proposal for the RFP would be a study for the veterans' population specifically. Mr. Cousins informed the subcommittee that Biomoda, Inc., has now been listed for public trading.

### **Public Comment**

Representative Chasey welcomed all attendees to the TSROC meeting and asked the members of the committee and support staff to introduce themselves.

Representative Chasey asked Nathan Bush to address the issue of funding tobacco-related programs through the DOH. Mr. Bush stated the Centers for Disease Control and Prevention (CDC) recommends that the funding for such programs be a minimum of \$13.7 million annually. DOH is currently funding \$7.2 million, an increase from the previous year of \$6 million. He would like to see an increase to \$10 million for FY08. He noted DOH can comfortably and effectively utilize the \$10 million this year. The effect of contractual services on DOH and the oversight required to manage the additional contracts resulting from increased appropriations were discussed. Mr. Bush stated there has been mention that two FTEs are needed for this oversight, and the CDC has decreased the percentage in their contract that DOH can use for positions over the past few years. It was clarified that DOH would need to set aside funds for FTEs and would need language separate from contractual services.

David Abbey, director, Legislative Finance Committee (LFC), stated that LFC's priority is spending on direct services rather than overhead and that it is import for the department to have adequate authority for oversight. Discussion occurred on the flat budgets that come before LFC and the knowledge that there will be additional growth, which will require increases in the budgets, which may require discussion with the governor.

### **Committee Discussion on FY08 Program Funding Recommendations**

Representative Chasey updated the committee members on the subcommittee discussion with Biomoda, Inc., regarding the proposed funding request of \$1.3 million through DVS.

Ramona Schmidt, LCS staff, reviewed FY07 recommendations, FY07 actual appropriations and the proposed FY08 recommendations. After review and discussion, committee members recommended an increase in tobacco-related program funding based on the projected revenue estimate for FY08 of \$23.3 million. Final recommendations are detailed in the fiscal year 2007 recommendations and actual appropriations and fiscal year 2008 proposed recommendations. A motion was made to adopt the FY08 funding recommendations as proposed. The motion was seconded and adopted.

The proposed legislation amending the Clean Indoor Air Act was presented to the committee by Representative Chasey for its endorsement. A motion was made to endorse. It was seconded and adopted.

A motion was made to approve the minutes from the October 6, 2006 meeting. The motion was seconded, and the minutes were adopted.

Having no further business, the committee adjourned at 12:00 noon.

Materials distributed at the meeting are in the meeting file in the LCS library.

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## **FY 2008 Funding Recommendations**



**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**  
**FISCAL YEAR 2008 RECOMMENDATIONS**

**1. CONTINUE AND INCREASE FUNDING FOR THE TOBACCO USE PREVENTION AND CONTROL PROGRAM (TUPAC), DEPARTMENT OF HEALTH (DOH)**

**Current Recurring Funding — \$6,000\***

**FY 2008 Recommended Recurring Funding — \$11,000**

The committee recommends continuing to build a comprehensive tobacco cessation and prevention program that will eventually reduce the number of tobacco users, thereby reducing tobacco-related disease and treatment, which presently costs \$48 million to \$70 million in Medicaid expenditures alone. The Centers for Disease Control and Prevention (CDC) recommends spending a minimum of \$14.2 million on such a program in order to significantly reduce tobacco use.

TUPAC contracts with over 60 contractors across the state to implement the goals of the program. The increase in funds would allow, among other things, a 1-800-Help line for cessation services, an increase in targeted school districts and youth activities and tobacco cessation coverage in health plans. Contractors under this program fall into six categories:

**Community Programs**

Local community programs reduce tobacco use through changes in the social environment and through community partnerships. The programs combine prevention, education and cessation efforts to mobilize communities to combat tobacco use and exposure. In addition to community health planning, the programs recruit youth into tobacco use prevention coalitions, train youth as advocates for their peers, provide media literacy and merchant education and counter tobacco marketing activities.

**Cessation Programs**

These programs focus on increasing the access and availability of stop-smoking counseling and treatment, from the simplest quit technique to the most intensive. They are based upon proven intervention models. The programs include cessation interventions in schools, communities and health facilities; education on how to deliver cessation services; training for people who will lead cessation groups; and media messages on quitting.

**School-Based Youth and Parent Programs**

These funds are awarded to school districts or allied organizations that provide programs ranging from age-specific classroom curricula to teacher training, special school projects, media literacy training, peer education programs and cessation programs for staff, parents and students. The programs are intended to prevent youth initiation of tobacco use, educate youth about the dangers of tobacco use, teach life skills and refusal skills and provide an opportunity for youth who already smoke or use spit tobacco to quit.

\* All dollar amounts are rounded and in thousands.

### **Media Campaigns**

These funds are awarded to provide public awareness and education campaigns that send and reinforce powerful tobacco-free messages to promote cessation and prevention of tobacco use and educate about risks associated with secondhand smoke. Activities include newspaper articles featuring youth tobacco prevention; anti-tobacco banners and billboards; media literacy training; counteradvertising for TV, radio, billboard and print media; and a 1-800-4-CANCER help line.

### **Partnerships with Disparate Populations**

These funds are awarded to assist various communities that are disproportionately affected by tobacco use, including Native Americans, Hispanics, women, rural populations and low-income individuals. Partnerships with these groups are aimed at increasing prevention and reducing tobacco use. Activities include facilitating focus groups and organizing and implementing forums to educate and inform.

### **Surveillance and Evaluation**

These funds are used to monitor the behaviors, attitudes and outcomes related to tobacco use and to track the progress of program elements and performance indicators. Efforts include developing a common reporting format for all TUPAC programs, providing evaluation training, conducting youth and adult tobacco surveys and identifying, collecting and analyzing evaluation information and data.

### **SMART Moves and the New Mexico Alliance of Boys and Girls Clubs**

SMART Moves is a national prevention program that aims to provide young people with the knowledge, skills, sense of self-worth and peer support they need to avoid alcohol, tobacco and other drugs. The program promotes involvement in other drug-related avoidance programs. Based on best practices from prevention specialists, the SMART Moves curriculum has been implemented successfully in the New Mexico Alliance of Boys and Girls Clubs and has shown significant positive results during the past three years.

## **2. CONTINUE FUNDING THE DIABETES PREVENTION AND CONTROL PROGRAM, DOH**

**Current Recurring Funding — \$1,000**

**FY 2008 Recommended Recurring Funding — \$1,000**

These funds provide public education and media exposure on diabetes and support for rural clinics, including supplies, equipment and lab tests. They would also provide diabetes education on children's health as well as activity and nutrition programs in elementary schools.

## **3. CONTINUE FUNDING HIV/AIDS SERVICES, DOH**

**Current Recurring Funding — \$470**

**FY 2008 Recommended Recurring Funding — \$470**

These funds provide chronic-care AIDS treatment services that help people with AIDS to lead longer, fuller and more productive lives. The care includes practical, psychosocial and clinical services. The funds are also used to contract with community-based organizations to implement statewide HIV prevention and education programs.

#### **4. THE BREAST AND CERVICAL CANCER SCREENING PROGRAM, DOH**

**Current Recurring Funding — \$0**

**FY 2008 Recommended Recurring Funding — \$200**

The purpose of these funds is to provide increased screening for breast or cervical cancer for women.

#### **5. CONTINUE AND INCREASE FUNDING THE BREAST AND CERVICAL CANCER TREATMENT PROGRAM, HUMAN SERVICES DEPARTMENT (HSD)**

**Current Recurring Funding — \$1,300**

**FY 2008 Recommended Recurring Funding — \$1,500**

The purpose of these funds is to provide treatment for women with breast or cervical cancer who are eligible for Medicaid. New Mexico receives an enhanced federal match for this program. Federal funds pay 82 percent and state funds pay 18 percent of the total cost. Since the program began in July 2002, the number of participants continues to grow. The program has been successful in early detection of cancer and precancerous conditions.

#### **6. EXPANDED MEDICAID ELIGIBILITY, HSD**

**Current Recurring Funding — \$0**

**FY 2008 Recommended Recurring Funding — \$1,380**

The purpose of these funds is to allow for expansion of Medicaid eligibility.

#### **7. CONTINUE AND INCREASE FUNDING RESEARCH PROGRAMS, UNIVERSITY OF NEW MEXICO (UNM) HEALTH SCIENCES CENTER (HSC)**

**Current Recurring Funding — \$2,500\*\***

**FY 2008 Recommended Recurring Funding — \$2,000**

These funds would be used for existing health care research programs by UNM HSC to translate research findings into effective clinical care programs, to disseminate scholarly work and to recruit and hire scientists and support personnel. The research funds would be spent as follows:

Genomics core facilities	\$ 216.7
Epidemiology	499.8

\*\* Includes \$1,000 appropriation not distributed to LRRI.

Enhanced tobacco-related research	240.0
Clinical research and trials	438.8
Biocomputing	<u>604.8</u>
	\$ 2,000.0

## **8. CONTINUE AND INCREASE FUNDING OTHER PROGRAMS ADMINISTERED BY UNM**

**Total Current Recurring Funding — \$1,900**

**Total FY 2008 Recommended Recurring Funding — \$2,450**

### **Area Health Education Centers — \$50**

The purpose of these funds is to increase the number of health care professionals practicing in rural and underserved areas and to expand clinical training in those areas for medical, nursing, public health, pharmacy, physician assistants and allied health students, as well as for primary care physicians. Additionally, the funds are intended to increase the health profession applicant pool from underrepresented ethnic minorities and from shortage areas. Finally, the funds would support and provide continuing education programs in order to retain health professionals in the underserved areas.

### **Center for Telehealth — \$300**

The purpose of these funds is to improve the quality of and access to health care systems in rural New Mexico by using advanced technology to extend the resources of the UNM HSC to remote areas of the state. The funds are used to increase the number of clinical services, educational programs and administrative activities delivered to remote sites. The center collaborates with the federal government and the University of Hawaii.

### **Los Pasos Program — \$50**

The purpose of these funds is to provide comprehensive health services to families and to children up to age three who have been exposed in utero to alcohol and other drugs. The goals include the prevention of negative consequences of parental use of alcohol, tobacco and other drugs, as well as training support and technical assistance to agencies and community programs in northern and central New Mexico.

### **Pediatric Oncology — \$800**

The purpose of these funds is to provide statewide quality care, treatment, monitoring and support for children and families facing childhood cancer. The program has initiated a three-year pediatric oncology curriculum for residents, and it advances the treatment of childhood cancer through the pursuit of clinical and basic research at local and national levels.

### **Poison and Information Center — \$450**

The purpose of these funds is to reduce the morbidity and mortality associated with poisoning and to encourage proper use of medications. The center provides a statewide poison prevention program, educates the public, offers first-aid information, distributes materials and provides treatment information to health professionals. The funds support 24-hour statewide expert assistance for poisoning emergencies. The center has an active research program,

provides education and training to health care professionals and collaborates with local, state and federal agencies.

**Specialty Education in Pediatrics — \$400**

The purpose of these funds is to pay the salaries of physicians serving on the pediatrics faculty at the UNM School of Medicine. The faculty treat children as well as educate medical students, residents and community providers. They conduct research to advance pediatric health care across the state. The funds will also be used for related materials, services and travel to assist the educational program.

**Specialty Education in Trauma — \$400**

The purpose of these funds is to pay the salaries of physicians serving on the UNM School of Medicine faculty. The faculty educate medical students in trauma, critical care and emergency care and staff the Level I Trauma Center at the UNM Hospital emergency room.

**9. CONTINUE AND INCREASE FUNDING THE LOVELACE RESPIRATORY RESEARCH INSTITUTE'S EMPHYSEMA AND LUNG CANCER RESEARCH, UNM**

**Current Recurring Funding — \$0**

**FY 2008 Recommended Recurring Funding — \$1,500**

These funds would continue the contract with Lovelace Respiratory Research Institute (LRRI) for its research in emphysema and lung cancer detection and treatment. LRRI is "leading the world" in lung cancer research. The research also includes a cohort study on women at risk for lung cancer and emphysema.

**10. CONTINUE FUNDING THE TOBACCO CESSATION AND PREVENTION PROGRAMS, INDIAN AFFAIRS DEPARTMENT**

**Current Recurring Funding — \$500**

**FY 2008 Recommended Recurring Funding — \$500**

The committee is recommending continuing the funding for tobacco cessation and prevention programs that impact Native American communities throughout the state, with a program evaluation to mirror that which was developed and implemented by the DOH.

**11. BIOMODA, INC., EARLY DETECTION OF LUNG CANCER, VETERANS' SERVICES DEPARTMENT (VSD)**

**Current Recurring Funding — \$0**

**FY 2008 Recommended Recurring Funding — \$1,300**

These funds would be used to contract with BioModa, Inc., to fund a clinical study validating diagnostic technology for the early detection of lung cancer using an inexpensive, non-invasive test developed in New Mexico. Funding will support a longitudinal study to be administered by the VSD, available for up to 2,500 veterans living in New Mexico.

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)**  
**FISCAL YEAR 2007 RECOMMENDATIONS AND ACTUAL APPROPRIATIONS**  
**AND FISCAL YEAR 2008 PROPOSED RECOMMENDATIONS**  
(thousands of dollars)

<b>Agency and Program</b>	<b>2007 TSROC Recommendations</b>	<b>2007 General Fund Appropriation</b>	<b>2008 TSROC Recommendations</b>	<b>2008 Proposed Increase</b>
<b>Department of Health</b>				
Tobacco cessation and prevention programs	\$8,690.0	\$6,000.0 (a)	\$11,000.0	\$1,000.0
Diabetes prevention and control program	1,000.0	1,000.0	1,000.0	
HIV/AIDS services	470.0	470.0	470.0	
Breast & cervical cancer screening program			200.0	200.0
<b>Total Department of Health</b>	<b>10,160.0</b>	<b>7,470.0</b>	<b>12,670.0</b>	<b>1,200.0</b>
<b>Human Services Department</b>				
Breast & cervical cancer treatment program	1,300.0	1,300.0	1,500.0	200.0
Medicaid Expansion			1,380.0	1,380.0
<b>Total Human Services Department</b>	<b>1,300.0</b>	<b>1,300.0</b>	<b>2,880.0</b>	<b>1,580.0</b>
<b>University of New Mexico</b>				
Innovations in preventing and treating tobacco-related diseases				
Genomics core facilities	162.5	162.5	216.7	54.2
Epidemiology	374.8	374.8	499.8	125.0
Enhanced tobacco-related research	180.0	180.0	240.0	60.0
Clinical research and trials	329.1	329.1	438.8	109.7
Biocomputing	453.6	453.6	604.8	151.2
<b>Subtotal UNM tobacco-related diseases</b>	<b>1,500.0</b>	<b>1,500.0</b>	<b>(b 2,000.0)</b>	<b>500.0</b>
<b>Other programs</b>				
Area Health Education Center	50.0	50.0	50.0	
Center for telehealth (formerly telemedicine)	150.0	150.0	300.0	150.0
Los Pasos program	50.0	50.0	50.0	
Pediatric oncology	400.0	400.0	800.0	400.0
Poison & Information Center	450.0	450.0	450.0	
Specialty education in pediatrics	400.0	400.0	400.0	
Specialty education in trauma	400.0	400.0	400.0	
<b>Subtotal UNM other programs</b>	<b>1,900.0</b>	<b>1,900.0</b>	<b>(b 2,450.0)</b>	<b>550.0</b>
Contract with Lovelace Respiratory Research Institute in lung and tobacco-related diseases	1,000.0	(c)	1,500.0	500.0
Recommended funding for LRRI retained by UNM		1,000.0	(c)	
<b>Subtotal UNM/LRRI</b>	<b>1,000.0</b>	<b>1,000.0</b>	<b>1,500.0</b>	<b>500.0</b>
<b>Total University of New Mexico</b>	<b>4,400.0</b>	<b>4,400.0</b>	<b>5,950.0</b>	<b>1,550.0</b>
<b>Indian Affairs Department</b>				
Tobacco cessation and prevention programs	500.0	500.0	500.0	
<b>Total Indian Affairs Department</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>0.0</b>
<b>Veterans' Services Department</b>				
Biomoda, Inc.			1,300.0	1,300.0
<b>Total Veterans' Services Department</b>	<b>0.0</b>	<b>0.0</b>	<b>1,300.0</b>	<b>1,300.0</b>
<b>Total Recurring Programs</b>	<b>\$16,360.0</b>	<b>\$13,670.0</b>	<b>\$23,300.0</b>	<b>\$5,630.0</b>
<b>University of New Mexico</b>				
Medical equipment related to cancer research	2,200.0			
Contract with Lovelace Respiratory Research Institute in lung and tobacco-related diseases	1,000.0	(d)		
<b>Total University of New Mexico</b>	<b>\$3,200.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>
<b>Total Non-Recurring Programs</b>	<b>\$3,200.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>

**Notes:**

(a) \$450,000 went to Smart Moves (alliance of boys and girls clubs).

(b) most of these programs received general fund appropriations over and above the tobacco settlement fund recommendations. The commission on higher education has also provided increases in the compensation levels.

(c) \$1 million appropriation recommended but not distributed to LRRI; retained by UNM.

(d) \$1 million supplemental non-recurring appropriation for LRRI; see footnote (c).

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## Proposed Legislation





HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO HEALTH; AMENDING, REPEALING AND ENACTING SECTIONS  
OF THE CLEAN INDOOR AIR ACT TO CONTROL LOCATIONS OF TOBACCO  
SMOKING; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-16-1 NMSA 1978 (being Laws 1985,  
Chapter 85, Section 1) is amended to read:

"24-16-1. SHORT TITLE.--~~[This act]~~ Chapter 24, Article 16  
NMSA 1978 may be cited as the "Clean Indoor Air Act"."

Section 2. Section 24-16-2 NMSA 1978 (being Laws 1985,  
Chapter 85, Section 2) is amended to read:

"24-16-2. DECLARATION OF POLICY AND INTENT--PUBLIC  
HEALTH.--The legislature finds and declares that the smoking of  
tobacco ~~[or any other weed or plant]~~ is a positive danger to  
health ~~[and a health hazard to those who are present in~~

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underscored material = new  
[bracketed material] = delete

1 ~~enclosed places and that smoking in such areas should be~~  
2 ~~confined to designated smoking areas]~~ and that exposure to  
3 secondhand smoke significantly increases the incidence risk for  
4 heart disease, cancer and respiratory disease in smokers and  
5 nonsmokers alike and puts expectant mothers at increased risk  
6 of giving birth to babies who have low birthweights and who are  
7 more likely to die of sudden infant death syndrome. The  
8 legislature further declares its intention to protect the  
9 public health from such hazards in public places and places of  
10 employment ~~[without imposing exorbitant costs on persons in~~  
11 ~~management and control of the places subject to]~~ and to  
12 establish minimum standards for the regulation of tobacco smoke  
13 as defined by the Clean Indoor Air Act. ~~[It is not the intent~~  
14 ~~of the legislature to preempt the field of regulation of~~  
15 ~~smoking in public from the enactment of ordinances by local~~  
16 ~~governing bodies which are not inconsistent with the Clean~~  
17 ~~Indoor Air Act.]"~~

18 Section 3. Section 24-16-3 NMSA 1978 (being Laws 1985,  
19 Chapter 85, Section 3) is amended to read:

20 "24-16-3. DEFINITIONS.--As used in the Clean Indoor Air  
21 Act:

22 [A. ~~"employer" means the state or any political~~  
23 ~~subdivision of the state who employs the services of more than~~  
24 ~~fifteen persons;~~

25 B. ~~"place of employment" means any enclosed indoor~~

1 ~~area under the control of a public employer which employees~~  
2 ~~normally frequent during the course of employment, including~~  
3 ~~but not limited to work areas, employee lounges, conference~~  
4 ~~rooms and employee cafeterias;~~

5 ~~G. "public meeting" means any meeting required by~~  
6 ~~law to be an open meeting;~~

7 ~~D. "public place" means any enclosed indoor area in~~  
8 ~~a building owned or leased by the state or any of its political~~  
9 ~~subdivisions;~~

10 ~~E. "smoke" or "smoking" means the carrying or~~  
11 ~~holding of a lighted pipe, cigar or cigarette of any kind or~~  
12 ~~any other lighted smoking equipment or the lighting or emitting~~  
13 ~~or exhaling the smoke of a pipe, cigar or cigarette of any~~  
14 ~~kind; and~~

15 ~~F. "smoking-permitted area" means that portion of a~~  
16 ~~public place in which smoking may be permitted.]~~

17 A. "bar" means an establishment that is devoted to  
18 the selling or serving of alcoholic beverages for consumption  
19 by patrons on the premises and in which the serving of food is  
20 only incidental to the consumption of those beverages,  
21 including taverns, nightclubs, cocktail lounges and cabarets;

22 B. "cigar bar" means an establishment that:

23 (1) is a bar as defined in Subsection A of  
24 this section; and

25 (2) is engaged in the business of selling

1 cigars for consumption by patrons on the premises and has  
2 generated ten percent or more of its total annual gross revenue  
3 or at least ten thousand dollars (\$10,000) in annual sales from  
4 the sale of cigars, not including any sales from vending  
5 machines, in the calendar year ending December 31, 2006. In  
6 any calendar year after December 31, 2006, a cigar bar that  
7 fails to generate at least ten percent of its total annual  
8 sales from the sale of cigars, not including sales from vending  
9 machines, shall not be defined as a cigar bar and shall not  
10 thereafter be known as such regardless of sales figures. A  
11 cigar bar shall agree to provide adequate information to  
12 demonstrate to the state's satisfaction compliance with this  
13 definition;

14 C. "department" means the department of health;

15 D. "designated outdoor smoking area" means an area  
16 where smoking may be permitted, designated by an employer or  
17 manager, outside an indoor workplace or indoor public place;  
18 provided that the following conditions are maintained:

19 (1) smoking shall not be permitted near any  
20 building entrance, including a door, window or ventilation  
21 system of any facility where smoking is prohibited under the  
22 provisions of the Clean Indoor Air Act, so as to prevent  
23 secondhand smoke from entering the indoor workplace or indoor  
24 public place; and

25 (2) employees or members of the general public

1 are not required to walk through the smoking area to gain  
2 entrance to the indoor workplace or indoor public place;

3 E. "employer" means an individual, a partnership, a  
4 corporation or the state or a political subdivision of the  
5 state that employs the services of one or more individuals;

6 F. "enclosed" means any interior space  
7 predominantly or totally bounded on all sides and above by  
8 physical barriers, regardless of whether such barriers consist  
9 of or include uncovered openings, screened or otherwise  
10 partially covered openings or open or closed windows;

11 G. "indoor public place" means the enclosed area  
12 within any governmental or nongovernmental place to which the  
13 public is invited or in which the public is permitted  
14 regardless of whether work or public business, meetings or  
15 hearings occur at any given time;

16 H. "indoor workplace" means any enclosed place  
17 where one or more persons engage in work, including lobbies,  
18 reception areas, offices, conference and meeting rooms,  
19 employee cafeterias and lunchrooms, break rooms and employee  
20 lounges, classrooms, auditoriums, hallways, stairways, waiting  
21 areas, elevators and restrooms and includes all indoor  
22 workplaces and enclosed parts regardless of whether work occurs  
23 at any given time;

24 I. "private club" means an organization, whether  
25 incorporated or not, that is the owner, lessee or occupant of a

1 building or portion thereof used exclusively for the  
2 organization's purposes at all times, that is operated solely  
3 for recreational, fraternal, social, patriotic, political,  
4 benevolent or athletic purposes, but not for pecuniary gain,  
5 and that only sells alcoholic beverages incidental to its  
6 operation. The organization shall have bylaws or a  
7 constitution to govern its activities and shall have been  
8 granted an exemption as a club under the provisions of Section  
9 501 of the Internal Revenue Code of 1986, as amended;

10 J. "restaurant" means a coffee shop, cafeteria,  
11 private or public school cafeteria or eating establishment and  
12 any other eating establishment that gives or offers for sale  
13 food to the public, patrons or employees, including kitchens  
14 and catering facilities in which food is prepared on the  
15 premises for serving elsewhere or a bar area within or attached  
16 to the premises;

17 K. "retail tobacco store" means a retail store used  
18 primarily for the sale of tobacco products and accessories and  
19 in which the sale of other products is merely incidental,  
20 including smoke shops, cigar shops or hookah lounges, and shall  
21 not include establishments that offer for sale alcoholic  
22 beverages for consumption by patrons on the premises;

23 L. "secondhand smoke" means smoke emitted from  
24 lighted, smoldering or burning tobacco when the smoker is not  
25 inhaling, smoke emitted at the mouthpiece during puff drawing

1 and smoke exhaled by the smoker;

2 M. "smokefree area" means any building or other  
3 enclosed space where smoking is prohibited;

4 N. "smoking" means inhaling, exhaling, burning,  
5 carrying or holding any lighted tobacco product, including all  
6 types of cigarettes, cigars and pipes and any other lighted  
7 tobacco product; and

8 O. "smoking-permitted area" means any building or  
9 other enclosed space where smoking may be permitted; provided  
10 that secondhand smoke does not infiltrate any area where  
11 smoking is prohibited pursuant to the Clean Indoor Air Act."

12 Section 4. Section 24-16-4 NMSA 1978 (being Laws 1985,  
13 Chapter 85, Section 4, as amended) is amended to read:

14 "24-16-4. SMOKING PROHIBITED [~~EXCEPT IN PERMITTED~~  
15 ~~AREAS~~].--

16 A. It is unlawful for a person to smoke in [a  
17 ~~public place or at a public meeting except in smoking-permitted~~  
18 ~~areas] any indoor workplace or indoor public place or in buses,  
19 taxicabs or other means of public transit not specifically  
20 exempted pursuant to the Clean Indoor Air Act.~~

21 B. No part of the state capitol or capitol north  
22 shall be designated as a smoking-permitted area."

23 Section 5. A new section of the Clean Indoor Air Act is  
24 enacted to read:

25 "[NEW MATERIAL] SMOKING-PERMITTED AREAS.--Notwithstanding

1 any other provision of the Clean Indoor Air Act, smoking-  
2 permitted areas include the following:

3 A. a private residence, except during hours of  
4 business operation while it is being used commercially to  
5 provide child care, adult care or health care or any  
6 combination of those activities;

7 B. a retail tobacco store;

8 C. a cigar bar;

9 D. a manufacturing facility for tobacco products;

10 E. a state-licensed gaming facility, casino or  
11 bingo parlor;

12 F. an indoor workplace to the extent that tobacco  
13 smoking is an integral part of a smoking cessation program that  
14 is approved by the department or of medical or scientific  
15 research that is conducted in the indoor workplace and in which  
16 each room of the indoor workplace in which tobacco smoking is  
17 permitted complies with signage requirements;

18 G. designated outdoor smoking areas;

19 H. private clubs;

20 I. a limousine under private hire;

21 J. hotel and motel rooms that are rented to guests  
22 and are designated as smoking-permitted rooms; provided that  
23 not more than twenty-five percent of rooms rented to guests in  
24 a hotel or motel may be so designated;

25 K. enclosed areas within restaurants, bars, hotel



1 and motel conference or meeting rooms while these places are  
2 being used for private functions; provided that none of these  
3 areas are open to the general public while the private  
4 functions are occurring and provided that smoke does not  
5 infiltrate other indoor workplaces or indoor public places  
6 where smoking is otherwise prohibited under the Clean Indoor  
7 Air Act; and

8 L. a site that is being used in connection with the  
9 practice of cultural or ceremonial activities by Native  
10 Americans and that is in accordance with the federal American  
11 Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

12 Section 6. A new section of the Clean Indoor Air Act is  
13 enacted to read:

14 "[NEW MATERIAL] PROHIBITION OF SMOKING NEAR ENTRANCES,  
15 WINDOWS AND VENTILATION SYSTEMS.--Smoking is prohibited near  
16 entrances, windows and ventilation systems of all workplaces  
17 and public places where smoking is prohibited by the Clean  
18 Indoor Air Act. An individual who owns, manages, operates or  
19 otherwise controls the use of any premises subject to the  
20 provisions of the Clean Indoor Air Act shall establish a  
21 smokefree area that extends a reasonable distance from any  
22 entrances, windows and ventilation systems to any enclosed  
23 areas where smoking is prohibited. The reasonable distance  
24 shall be a distance sufficient to ensure that persons entering  
25 or leaving the building or facility shall not be subjected to

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1 breathing tobacco smoke and to ensure that tobacco smoke does  
2 not enter the building or facility through entrances, windows,  
3 ventilation systems or any other means."

4 Section 7. A new section of the Clean Indoor Air Act is  
5 enacted to read:

6 "[NEW MATERIAL] RESPONSIBILITIES OF EMPLOYERS.--

7 A. Employers shall provide that their places of  
8 employment meet the requirements of the Clean Indoor Air Act.

9 B. An employer shall adopt, implement, post and  
10 maintain a written smoking policy pursuant to the Clean Indoor  
11 Air Act."

12 Section 8. A new section of the Clean Indoor Air Act is  
13 enacted to read:

14 "[NEW MATERIAL] POSTED SMOKEFREE AND SMOKING-PERMITTED  
15 AREAS.--To advise persons of the existence of smokefree areas  
16 or smoking-permitted areas, signs shall be posted as follows:

17 A. for all areas of an indoor workplace or indoor  
18 public place where smoking is prohibited pursuant to the Clean  
19 Indoor Air Act, a "NO SMOKING" sign shall be posted where it is  
20 clear, conspicuous and easily legible in all areas where  
21 smoking is prohibited. Posting of "NO SMOKING" signs is the  
22 responsibility of the owner, operator, manager or other person  
23 having control of the indoor workplace or indoor public place,  
24 and "NO SMOKING" signs shall also be placed at all outdoor  
25 entrances to such areas;

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1           B. for smoking-permitted areas pursuant to the  
2 Clean Indoor Air Act, a "SMOKING PERMITTED" sign shall be  
3 posted where it is clear, conspicuous and easily legible in all  
4 smoking-permitted areas. Posting of "SMOKING PERMITTED" signs  
5 is the responsibility of the owner, operator, manager or other  
6 person having control of the areas, and "SMOKING PERMITTED"  
7 signs shall also be placed at all outdoor entrances to such  
8 areas;

9           C. every theater or auditorium owner, manager or  
10 operator shall conspicuously post signs in the lobby of the  
11 facility stating that smoking is prohibited within the theater  
12 or auditorium in accordance with the Clean Indoor Air Act; and

13           D. every restaurant shall have posted at every  
14 public entrance to the restaurant a conspicuous sign clearly  
15 stating that smoking is prohibited in accordance with the Clean  
16 Indoor Air Act."

17           Section 9. A new section of the Clean Indoor Air Act is  
18 enacted to read:

19           "[NEW MATERIAL] ENFORCEMENT.--

20           A. The local fire, police or sheriff's department  
21 with appropriate jurisdiction over the location where a  
22 violation of the provisions of the Clean Indoor Air Act occurs  
23 shall enforce that act by issuance of a citation.

24           B. A person may register a complaint regarding an  
25 alleged violation pursuant to the Clean Indoor Air Act to

1 initiate enforcement of the act with the department or the  
2 local fire, police or sheriff's department.

3 C. The designated enforcement agencies may inspect  
4 an establishment for compliance with the Clean Indoor Air Act."

5 Section 10. A new section of the Clean Indoor Air Act is  
6 enacted to read:

7 "[NEW MATERIAL] VIOLATIONS.--It is unlawful for a person  
8 who owns, manages, operates or otherwise controls the use of  
9 premises subject to regulation under the Clean Indoor Air Act  
10 to violate its provisions. The owner, manager or operator of  
11 premises subject to regulation under the Clean Indoor Air Act  
12 shall not be subject to a penalty if a person on the premises  
13 is in violation of the Clean Indoor Air Act as long as the  
14 owner, manager or operator has posted signs, implemented the  
15 appropriate policy and informed the person that the person is  
16 in violation of the Clean Indoor Air Act."

17 Section 11. A new section of the Clean Indoor Air Act is  
18 enacted to read:

19 "[NEW MATERIAL] PENALTIES.--A person eighteen years of age  
20 or older who violates a provision of the Clean Indoor Air Act  
21 is subject to:

22 A. a fine not to exceed one hundred dollars (\$100)  
23 for the first violation of the Clean Indoor Air Act;

24 B. a fine not to exceed two hundred dollars (\$200)  
25 for the second violation of the Clean Indoor Air Act within any

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1 consecutive twelve-month period of the first violation; and

2 C. a fine not to exceed five hundred dollars (\$500)  
3 for the third and each subsequent violation of the Clean Indoor  
4 Air Act within any consecutive twelve-month period of a  
5 previous violation."

6 Section 12. A new section of the Clean Indoor Air Act is  
7 enacted to read:

8 "[NEW MATERIAL] NONRETALIATION--NONWAIVER.--

9 A. A person or employer shall not discharge, refuse  
10 to hire or in any manner retaliate against an employee,  
11 applicant for employment or patron because that employee,  
12 applicant or patron exercises any rights afforded by the Clean  
13 Indoor Air Act or reports or attempts to prosecute a violation  
14 of that act.

15 B. An employee who works in a setting where an  
16 employer allows smoking does not waive or otherwise surrender  
17 any legal rights the employee may have against the employer or  
18 any other party."

19 Section 13. A new section of the Clean Indoor Air Act is  
20 enacted to read:

21 "[NEW MATERIAL] EXPLICIT NONPREEMPTION.--Nothing in the  
22 Clean Indoor Air Act shall be construed to preempt or in any  
23 manner preclude specific provisions of a county or municipal  
24 smoking ordinance; provided that the smokefree provisions of  
25 such a county or municipal ordinance are inclusive of all

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1 minimum standards and provisions for smokefree areas within the  
2 Clean Indoor Air Act."

3 Section 14. REPEAL.--Sections 24-16-5 through 24-16-11  
4 NMSA 1978 (being Laws 1985, Chapter 85, Sections 5 through 11)  
5 are repealed.

6 Section 15. SEVERABILITY.--If any part or application of  
7 this act is held invalid, the remainder or its application to  
8 other situations or persons shall not be affected.

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